

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL BRUCE ANTHONY
MCPHERSON,

Petitioner,

v.

WARDEN,

Respondent.

No. 2:23-cv-1014 WBS KJN P

ORDER

Petitioner, a state prisoner proceeding pro se and in forma pauperis, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 6, 2023, respondent was directed to file a responsive pleading within sixty days. (ECF No. 11.) On July 21, 2023, petitioner renewed his motion for immediate release, apparently prior to receiving the court's July 19, 2023 order denying petitioner's prior motion for immediate release (ECF No. 16).

Petitioner states that on June 23, 2023, the Clerk entered a "no appear" on the respondent. (ECF No. 18 at 1-2.) However, there is no such entry on the court docket.

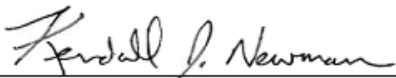
In his current motion, petitioner relies on Rule 59 of the Federal Rules of Civil Procedure. (ECF No. 18.) However, Rule 59 is not applicable. No trial has been held in this action, and no judgment has yet been entered. Indeed, the deadline for filing a responsive pleading has not yet expired. As petitioner was previously informed, under 28 U.S.C. § 2254, respondent is entitled to

1 respond to the petition, and then petitioner will have an opportunity to file a reply, if the response
2 is an answer, or an opposition, if respondent files a motion to dismiss. Once the matter is fully
3 briefed, then the matter will be submitted for decision.

4 This is the third motion for release that petitioner has filed. (ECF Nos. 15, 17, 18.)
5 Petitioner is not entitled to immediate release on this record, and he should refrain from renewing
6 such motions.

7 In accordance with the above, IT IS HEREBY ORDERED that petitioner's motion (ECF
8 No. 18) is denied.

9 Dated: August 8, 2023

10 
11 KENDALL J. NEWMAN
12 UNITED STATES MAGISTRATE JUDGE

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